

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 2054

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Extending Wireless)
Telecommunications Services)
To Tribal Lands)

WT Docket No. 99-266

To: The Commission

COMMENTS OF THE TOHONO O'ODHAM UTILITY AUTHORITY

The Tohono O'odham Utility Authority ("TOUA"),¹ by its attorney, and in response to the Commission's Notice of Proposed Rulemaking in the captioned proceeding,² hereby submits its comments. TOUA is a tribally-owned entity, created for the specific purpose and duly authorized to provide telecommunications and other basic utility services within tribal lands located in Arizona. TOUA confines its comments in this docket to the availability of spectrum to tribal entities and other entities to provide basic telephone service in high-cost rural areas.

¹ TOUA is a local exchange company, pursuant to the authority granted to operate as such by its Tribal Council. TOUA is a "rural telephone company" under the Telecommunications Act of 1996. Pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (the "Act"), TOUA was designated an Eligible Telecommunications Carrier ("ETC") by the Commission. *See* Designation of Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., San Carlos Apache Telecommunications Utility, Inc., and Tohono O'odham Utility Authority as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, *Memorandum Opinion and Order*, DA 98-392 (rel. February 27, 1998).

² *In the Matter of Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266 (rel. Aug. 18, 1999) ("NPRM").

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As the Commission notes, wireless technologies can, under certain circumstances, offer an economic alternative to the construction of wireline facilities for the provision of basic telephone services.³ TOUA itself utilizes BETRS frequencies to provide basic service to more remote areas of tribal lands. TOUA is concerned, however, that the NPRM appears to suggest that BETRS frequencies are being overlooked by tribal service providers and other rural telephone companies as an economic means of providing service, or that existing licensees are hampered only by technical limitations. Although relaxation of height/power limitations could potentially increase the utility of existing sites, it is the Commission's own licensing procedures which preclude the construction and operation of new BETRS stations.

The Commission states:

Although there are thousands of existing BETRS lines in service in the United States, our records indicate that relatively few new BETRS systems are being licensed at present, in tribal lands or elsewhere. We seek comment on the degree to which our current BETRS rules limit the ability of licensees to provide basic telephone service to tribal lands because subscriber stations would normally be out of range from the nearest telephone central office.⁴

By this statement, the Commission appears to disavow any responsibility for the current licensing scheme which precludes the availability of a new BETRS station license on a primary, protected basis. Pending the upcoming auction of the spectrum on the basis of massive geographic license areas, BETRS licenses are available on a secondary basis only, and are subject to the primary rights of the to-be-designated auction winner. Utilizing spectrum for the delivery of basic services

³ TOUA notes, however, that broadband, high-speed services are not yet available over most radio frequency blocks.

⁴ NPRM at para. 19.

under these conditions contradicts prudent investment decisions and reasoned customer service programs. In short, because of the Commission's desire to auction all portions of the spectrum, it has eliminated the availability of site-by-site licensing of radio spectrum to serve specific basic telephone service needs.

It is somewhat ironic for the Commission to puzzle over the reasons for limited BETRS licensing when, only three months before the release of the NPRM, the Commission reaffirmed its abandonment of BETRS as a realistically useful method for rural telephone companies' provision of basic local telephone service. In May of this year, the Commission declined to adopt rules that would permit site-by-site licensing of BETRS on a co-primary basis with geographic area paging licensees, noting that it was not "abolishing" BETRS, but, to the contrary, protecting this "important service" by directing that existing BETRS remain in place and receive "interference protection from geographic area licensees."⁵

Having decided that market forces (generating pre-or post- auction formation of consortia or partitioning arrangements) were an "adequate means of accommodating BETRS licensees seeking modifications to existing BETRS or wishing to establish new systems,"⁶ the Commission's inquiry into the reasons for limited utilization of BETRS is somewhat perplexing.

⁵ *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, In the Matter of Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems (WT Docket No. 96-18); In the Matter of Implementation of Section 309(j) of the Communications Act – Competitive Bidding (PR Docket No. 93-253), para. 30, (rel. May 24, 1999) .

⁶ *Id.* at para. 33.

Of course, given the Commission's history of confusion regarding the impact of its actions on the utilization of BETRS, this should come as no surprise. As support for its May decision declining to exempt BETRS from geographic area auctioning, the Commission stated that

there has not been much recent activity in licensing Rural Radiotelephone Services We have received only 16 new or major modification applications for Rural Radiotelephone licenses between January 1, 1998 and May 1, 1999.⁷

This serves as yet another example of the Commission's revisionist approach to the history of BETRS regulatory treatment. The Commission's adoption of geographic licensing precluded the grant of BETRS applications on a primary basis as of May 11, 1997,⁸ more than seven months prior to the January 1, 1998 date utilized by the Commission as a starting point from which to measure application activity.

TOUA, which holds a BETRS license on a secondary basis, files these comments to ensure that the public record is clear. TOUA's ability to provide economic service has been compromised by the Commission's action which obstructs reasonable access to the radio spectrum for specific, universal service purposes within a given geographic area. Inasmuch as the Commission appears now to believe that wireless technology, at least in the hands of commercial wireless cellular and PCS carriers, will solve the problem of high-cost service on tribal lands, the

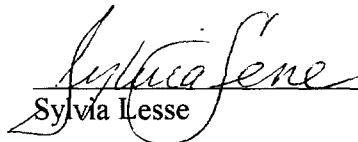
⁷ *Id.* at n. 120.

⁸ *Second Report and Order and Further Notice of Proposed Rulemaking*, , In the Matter of Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems (WT Docket No. 96-18); In the Matter of Implementation of Section 309(j) of the Communications Act – Competitive Bidding (PR Docket No. 93-253)(rel. Feb. 24, 1997) (*Second Order*). The Federal Register publication of the *Second Order* occurred on March 12, 1997 (62 FR 11616); accordingly, the effective date for geographic licensing of BETRS occurred, at the latest, on May 11, 1997.

Commission should reevaluate its decision to deny reasonable access to the spectrum to existing tribal companies and others already committed to providing service to rural areas.

Respectfully submitted.

TOHONO O'ODHAM UTILITY AUTHORITY

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November 9, 1999

DECLARATION OF CHARLES W WIESE

I, Charles Wiese, General Manager of the Tohono O'odham Utility Authority, do hereby state that I have read the foregoing Comments of Tohono O'odham Utility Authority I certify under penalty of perjury that the facts presented therein are true and correct



Charles W Wiese

November 9, 1999

Date

CERTIFICATE OF SERVICE

I, Teresa Rhea, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Comments of Tohono O'Odham Utility Authority, was served this 9th day of November, 1999, by hand delivery to the following parties:



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